

**Facilities Use Agreement
Between
NAPA SILVERADOS BASEBALL CLUB
And
NAPA VALLEY COLLEGE COMMUNITY COLLEGE DISTRICT**

This Agreement (hereinafter "Agreement") is entered into by and between NAPA SILVERADOS BASEBALL CLUB (hereinafter "BASEBALL") and Napa Valley College Community College District (hereinafter "DISTRICT"). Agreement to be managed by the Napa Valley College District Auxiliary Services, a Community College Auxiliary Foundation for Napa Valley Community College District, organized and existing under the laws of the State of California (hereinafter "NVC-DAS").

WHEREAS, BASEBALL is established for the recreational purposes of the communities of the District, and is a member of the Pacific Association of Professional Baseball Clubs; and

WHEREAS, BASEBALL desires to use the DISTRICT's facilities for purposes of practices and games and in connection with such games, intends to bring awareness of and support for the District's educational activities and improvements to the District's facilities;

WHEREAS, DISTRICT and NVC/DAS desire to improve their facilities, support the goals of BASEBALL to increase visibility for the District, and create additional recreational opportunities for District communities;

WHEREAS, Education Code Section 82542 permits the use of DISTRICT facilities by for entertainment or a meeting where an admission fee is charged;

In consideration of the mutual agreements herein, both parties agree as follows:

Article 1. EFFECTIVE DATE, TERM, TERMINATION AND EFFECT OF TERMINATION

- 1.1. This Agreement shall be effective as of the date that it is signed by both Parties to this Agreement and approved by the District Board of Trustees (the "Effective Date")
- 1.2. This Agreement shall be effective for five years, commencing on the Effective Date of the Agreement.
- 1.3. Either party may terminate this Agreement for its own convenience or for no reason upon 180 (one hundred eighty) days' written notice to the other party. Termination shall be effective upon the expiration of the 180-day notice period (the "Termination Date"). Upon termination, DISTRICT shall have any further obligations to BASEBALL under this Agreement.

Article 2. GOVERNANCE

- 2.1. BASEBALL shall be responsible for all operations of BASEBALL.

2.2. For NVC-DAS, on behalf of the DISTRICT , NVC Superintendent/President and DAS Board Chair, shall have full authority to make decisions with respect to the terms and procedures of this agreement and any and all events produced by BASEBALL.

Article 3. FACILITIES AND SCOPE OF USE OF FACILITIES

3.1. The DISTRICT, shall make available to BASEBALL the following property and facilities:

3.2. BASEBALL shall have access to and use of the District's Baseball field, Hardcourt, Parking Lot J, paved and grass areas contiguous the Baseball field, and designated areas of the locker rooms, located at Building 600 (collectively "Facilities").

3.3. BASEBALL may use the Facilities solely for the purpose of BASEBALL games and practices and for no other purpose unless approved, in writing, by the DISTRICT or NVC-DAS.

3.4. BASEBALL may only use the Facilities during BASEBALL's season from May through August during the term of this Agreement, and at no other time, absent consent from the DISTRICT or NVC-DAS.

3.5. BASEBALL'S access to the Facilities under this Agreement shall be non-exclusive and DISTRICT and NVC-DAS reserve the right to cancel or reschedule BASEBALL games or practices, at their sole discretion, to meet the needs of the DISTRICT. However, DISTRICT and NVC-DAS shall make reasonable efforts to accommodate BASEBALL, and to coordinate scheduling and use of the Facilities by other District constituents, including but not limited to, the DISTRICT's baseball team, with BASEBALL. To that end, the DISTRICT shall provide BASEBALL with a schedule of other events and activities scheduled at the Facilities, on or about December 15 of each year, during the term of this Agreement. BASEBALL shall provide its preliminary calendar for review and approval prior to December 31 of each year. BASEBALL shall provide its final schedule no later than February 1 of each year.

3.6. BASEBALL estimates that it will play approximately 40 games per season, and anticipates that approximately 200 -600 community members will attend such games. Material deviation from the BASEBALL's estimated number of games, or attendees, constitutes a material change in the anticipated scope of use of the Facilities which shall require consent of the DISTRICT or NVC-DAS.

Article 4. SERVICES AND EQUIPMENT

4.1. NVC-DAS, on behalf of DISTRICT , shall provide access to BASEBALL to the existing District Internet network and utilities to the extent that they are available in the ordinary course at the Facilities.

4.2. BASEBALL may provide temporary storage facilities at a mutually agreed location for its use during its regular season that shall be removed at the conclusion of its season.

4.3. BASEBALL may install and maintain signage on DISTRICT fencing surrounding BASEBALL field

during the course of its regular season.

Article 5. PAYMENT AND ALLOCATION OF DIRECT COSTS

5.1. BASEBALL shall pay District in-kind for use of the Facilities in the form of marketing and promotional activities, and through improvements of the District's premises and property as follows:

5.1.1. BASEBALL shall designate DISTRICT as a BASEBALL Founding Partner, which shall result in recognition of the DISTRICT through prominent placement of DISTRICT's name and a brief summary of the District's educational mission in promotional materials, including BASEBALL's signage, print media (including BASEBALL'S yearly program, daily program, and other advertising), audio, and digital media (including, but not limited to, BASEBALL's website, social media, and email marketing) per the Marketing and Partnership Information packet dated xx/xx/xx.

5.1.2. With the written approval of DISTRICT, BASEBALL shall complete or reimburse DISTRICT for the following:

- 5.1.2.1. Improving Baseball Field bleachers to increase seating from 120 to [450]
- 5.1.2.2. Improving the Press/Announcer box and public address sytem;
- 5.1.2.3. Improvements to Backstop/Backstop area;
- 5.1.2.4. Temporary striping to realign/relocate-disabled parking.

5.2. BASEBALL shall also be responsible for the following direct costs where services are required outside the normal course of DISTRICT or NVC-DAS operations (to be determined in the DISTRICT's sole discretion): (i) Custodial Services at \$40 per hour, per person; and (ii) public safety/college police at \$60 per hour, per officer.

5.3. During BASEBALL's games, BASEBALL shall also provide sufficient personnel to manage and staff the Facilities and shall be solely responsible for compensating such personnel. In advance of any scheduled BASEBALL game, DISTRICT/NVC-DAS shall provide field preparation and site-supervision personnel at \$15-20 per hour, per person.

5.4. Reimbursement for all costs incurred by the District or NVC-DAS in connection with this Article V shall be made by BASEBALL within thirty days after receipt of an invoice from the DISTRICT or NVC-DAS, as applicable, for such costs.

5.5. The parties understand and agree that BASEBALL's use of the Facilities must be in exchange for the fair rental value of use of the Facilities pursuant to Education Code section 82542. To the extent that the cost of improvements and fair value of marketing to be provided pursuant to this Agreement are less than the fair market value of use of the Facilities, BASEBALL agrees to reimburse DISTRICT for the difference between (i) the fair value of the use of the Facilities and (ii) costs incurred by BASEBALL under Article V of this Agreement.

Article 6. CONDITION OF PREMISES

6.1. BASEBALL accepts the Facilities as being clean and in good and safe condition and agrees to

return the Facilities to the DISTRICT in the same condition as when received, reasonable wear and tear excepted, upon the completion of BASEBALL's season. BASEBALL further agrees to be personally responsible for any damages or harm sustained to the Facilities, including but not limited to all equipment, in connection with BASEBALL's use of the Facilities, including, without limitation, damages caused by the actions or omissions of BASEBALL, its members, partners, owners, officers, directors, employees, contractors, agents, volunteers, patrons, or guests. Repairs or replacements shall be made to the satisfaction of the DISTRICT.

Article 7. PROPERTY BROUGHT TO FACILITIES

7.1. BASEBALL shall be responsible for all property that it places on or in the Facilities. Neither DISTRICT, nor NVC-DAS, assume any responsibility for such property and BASEBALL expressly relieves and discharges DISTRICT and NVC-DAS from any liability for any loss, injury or damage to such property. BASEBALL shall remove all such property from the Facilities at the conclusion of its season. If BASEBALL fails to remove such property, BASEBALL shall pay DISTRICT, or NVC-DAS, as applicable, for expenses incurred in removing or storing such property. In addition, DISTRICT or NVC-DAS may retain, use, or destroy property that is left in or on the Facilities by BASEBALL after the DISTRICT or NVC-DAS provides notice to BASEBALL and BASEBALL has failed to collect or remove such property within two-weeks after such notice.

Article 8. USE OF NAME AND LOGO

8.1. District hereby grants BASEBALL a limited, non-exclusive, non-transferable right during the Term to use the approved Napa Valley College name and logo in any and all media as part of press releases, marketing, advertising and promotional materials in connection with BASEBALL. BASEBALL hereby grants NVC-DAS, on behalf of the District a limited, non-exclusive right during the Term to use the BASEBALL name and logo in any and all media as part of press, releases, marketing, advertising and promotional materials in connection with this Agreement.

Article 9. INSURANCE, LICENSES, PERMITS

9.1. BASEBALL agrees, at its sole expense, to procure and maintain during the term of this Agreement, the following insurance with minimum limits equal to the amount indicated below:

- 9.1.1. General Liability Insurance that shall protect BASEBALL, DISTRICT and NVC-DAS from all claims of bodily injury, property damage, personal injury, death, other injury, and medical payments arising from any portion of this Agreement or Baseball's use of the Facilities. BASEBALL shall maintain such General Liability Insurance, with a single combined limit of one million dollars (\$1,000,000.00) per occurrence and aggregate of two million dollars (\$2,000,000.00).
- 9.1.2. Automobile Liability Insurance. Automobile Liability Insurance that shall protect BASEBALL, the DISTRICT and NVC-DAS from all claims of bodily injury, property damage, personal injury, death, other injury, and medical payments arising from any portion of this Agreement or the Event. BASEBALL shall maintain such Automobile Liability Insurance that provides not less than five hundred thousand dollars (\$500,000.00) per occurrence applicable to all owned, non-owned and hired vehicles.
- 9.1.3. Workers' Compensation and Employers' Liability Insurance. In accordance with provisions of section 3700 of the California Labor Code, BASEBALL shall be required to

secure workers' compensation coverage for its employees in the amount required by law. BASEBALL shall maintain required Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000.00) per occurrence (accident) and one million dollars (\$1,000,000.00) per employee (disease).

- 9.2. Proof of Carriage of Insurance and Endorsements. BASEBALL shall not commence any work under this Agreement until all required insurance has been obtained and certificates indicating the required coverages have been delivered in duplicate to DISTRICT or NVC-DAS and approved by DISTRICT or NVC-DAS. Certificates and insurance policies shall not be cancelled or reduced without thirty (30) days' notice to DISTRICT and must contain endorsements stating DISTRICT and NVC-DAS and their respective agents, representatives, employees, trustees, officers, consultants and volunteers are named additional insureds under all policies except Workers' Compensation Insurance. An endorsement will also state the BASEBALL's insurance policies shall be primary to any insurance or self-insurance maintained by the DISTRICT and NVC-DAS. Additionally, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the DISTRICT.
- 9.3. BASEBALL shall ensure that liability insurance carried by BASEBALL includes coverage for any injury or liability arising from "Advertising," defined as the public dissemination of information by BASEBALL, including images or audio that has the purpose of inducing the sale of goods, products or services through BASEBALL activities, which may result in any injury or offenses that take place through the internet or similar electronic means of communications.
- 9.4. BASEBALL shall also maintain or ensure the maintenance of all required licenses, permits, signage, and postings associated with its operations, or the operations of its concessionaires, including those associated with food service, beer and wine service, and employment.

Article 10. INDEMNIFICATION

- 10.1. BASEBALL and the undersigned agree to defend, indemnify, and hold harmless the DISTRICT, NVC-DAS, and their respective Boards of Trustees and Directors, officers, agents, employees, volunteers, and students, individually, or collectively, from and against all damages, liability, costs, losses, claims, demands, suits, actions, payments, judgments, or causes of action, including legal costs and attorneys' fees, arising out of or in any way related to BASEBALL's use of the Facilities or this Agreement, including but not limited to, liability arising from personal or bodily injuries on or in the Facilities, property damage, advertising, security or police actions or omissions, and inadequate permitting. It is the intent of the parties that BASEBALL shall indemnify DISTRICT and NVC-DAS to the greatest extent permitted by law.
- 10.2. Notwithstanding anything to the contrary contained in this Agreement, BASEBALL shall not be required to indemnify and defend NVC-DAS or DISTRICT to the extent that any claims identified in Section 10.1 against NVC-DAS or the District are attributed in binding arbitration or a court of law directly to:
- 10.2.1. Any grossly negligent or intentional misconduct of any NVC-DAS or District officer, director, employee, student, agent, attorney, representative, volunteer, successor or

assign; or

10.2.2. Any violation by NVC-DAS or District, and their officers, directors, employees, students, agents, attorneys, representatives, volunteers, successors or assigns of the laws of the United States or any state of the United States.

Article 11. DISPUTE RESOLUTION

11.1. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or breach thereof, the parties agree to use their best efforts to settle the dispute, claim, question, or disagreement. To that end, they shall consult and negotiate with each other in good faith and, recognizing their mutual interest, attempt to reach just and equitable solutions satisfactory to both parties. If the parties do not reach such solution within a period of thirty (30) days, then, upon written notification to either party, by either to the other, all disputes, claims, questions, or disagreements will be presented to a mediator selected by both parties. If the parties do not reach solution with the assistance of the mediator within a period of sixty (60) days, as stated in writing by the mediator, all disputes, claims, questions, or disagreements will be formally settled by binding arbitration administered in accordance with Cal. Code Civ. Proc. §§1280-1294.2.

Article 12. SUPERVISION AND SECURITY

12.1. BASEBALL shall comply with all NVC-DAS and DISTRICT approved policies and regulations and all applicable federal and state laws, concerning welfare, safety and health of employees, visitors, volunteers and others.

12.2. BASEBALL shall (i) provide security personnel or (ii) contract with the District for security personnel and reimburse District for costs of such security personnel as described herein. Neither DISTRICT nor NVC-DAS has any independent obligation to provide security personnel at BASEBALL games or practices.

12.3. DISTRICT and/or NVC-DAS shall provide field preparation and site-supervision personnel as necessary, to be determined their sole discretion. DISTRICT/NVC-DAS shall make every effort to maintain the facilities per League standards (attached – Exhibit XXX). A pre-season and post-season inspection shall be scheduled with BASEBALL and District staff to identify deficiencies and mutually agree on resolution.

Article 13. MISCELLANEOUS

13.1. Force Majeure. Neither party shall be liable if the performance of any part or all of this agreement is prevented, delayed, hindered or otherwise made impracticable or impossible by reason of any earthquake, strike, flood, riot, fire, explosion, war, act of God, sabotage, accident or any other casualty or cause beyond either party's control, and which cannot be overcome by reasonable diligence and without unusual expense.

13.2. California Law. This Agreement shall be governed by the rights, duties, and obligations of the Parties which shall be determined and enforced in accordance with the laws of the State of California.

13.3. Construction and Enforcement. The article and paragraph headings are used solely for convenience, and shall not be deemed to limit the subject of the articles and paragraphs or be considered in their interpretation. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

13.4. Independent Contractor Status. The parties to this Agreement intend that the relationship between them created by this Agreement is that of an independent contractor, and not an employer/employee. No agent, employee, or servant of BASEBALL shall be deemed to be an employee, agent, or servant of NVC-DAS or DISTRICT, except as expressly acknowledged in writing by NVC-DAS or DISTRICT. No agent, employee or servant of NVC-DAS or DISTRICT shall be deemed to be an employee, agent or servant of BASEBALL, except as expressly acknowledged in writing.

13.5. Integration. This Agreement contains all of the terms and conditions agreed upon by the parties. Any prior or contemporaneous agreements, promises, negotiation, or representations, either oral or written, related to the subject matter of this Agreement, not expressly set forth in this Agreement, shall have no force or effect.

13.6. Modification, Amendment, Waiver. No modification or amendment of any provision of this Agreement shall be effective unless approved in writing and signed by both parties. The failure of a party to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of either party thereafter to enforce each and every provision hereof in accordance with its terms.

13.7. Invalidity of Provisions of this Agreement. If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions shall not be affected.

13.8. Nondiscrimination. BASEBALL covenants and agrees that it shall not discriminate against any person or group thereof upon the basis of race, color, religion, sex, ancestry, physical handicap, marital status, or national origin in the operation of BASEBALL. BASEBALL shall comply with federal and state laws, rules, and regulations pertaining to nondiscrimination of hiring and employment.

13.9. Non-Assignment. This Agreement shall not be assigned by either party without the prior written consent of the other party.

13.10. No Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision. Nor shall such waiver constitute a continuing waiver unless otherwise expressed.

13.11. Appendices. Appendices to this Agreement shall become a part of this Agreement and shall be incorporated as of the date both parties agree to the content of the Appendices .

13.12. Attorney's Fees. If any action or proceeding is necessary to enforce the provisions of this Agreement, including any claim or demand, or to interpret this Operational Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which it may otherwise be entitled, whether or not such action or proceeding is prosecuted to judgment.

13.13. Survival. All representations, warranties, and indemnities made herein shall survive termination of this Agreement, including, without limitation, Article 10 of this Agreement. Article 11 and Section 13.11 shall also survive termination of this Agreement.

13.14. Notices. All notices required or permitted by this Agreement shall be in writing and shall either be hand delivered, sent by telecopy or facsimile, sent by U.S. mail, postage prepaid, addressed as set forth on the signature page hereof. A notice shall be effective either when personally delivered, on the date set forth on the receipt of a telecopy or facsimile, or upon the earlier of the date set forth on the receipt of registered or certified mail or on the fifth day after mailing.

Notices shall be delivered to the following individuals on behalf of each party:

For DISTRICT/NVC-DAS:

Dr. Ronald Kraft, Ph.D.
President
CC. Carollee Cattolica
Special Assistant to the President
Managing Director of College Foundations/Advancement
Napa Valley Community College District/DAS
2277 Napa-Vallejo Highway
Napa, CA 94558
707-256-7160

For BASEBALL:

Bruce Johnson,
CEO
Napa Silverados Baseball Club

1370 Trancas St. #199
Napa, CA 94559
phone

13.15. Each party represents and warrants that the signatories to this Agreement are legally authorized to sign and enter into this Agreement on behalf of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of **XXX, 2018.**